

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	
)	CC Docket No. 95-116
Petitions of Franklin Telephone Company,)	
Inc., Inter-Community Telephone)	
Company, LLC, and North Central)	
Cooperative, Inc., for Waiver of)	
Section 52.23(c) of the Commission's Rules)	
)	

**COMMENTS OF AT&T WIRELESS SERVICES, INC. ON
PETITIONS FOR WAIVER OF LNP OBLIGATION**

AT&T Wireless Services, Inc. ("AWS") respectfully submits these comments on the petitions filed by Franklin Telephone Company, Inc. ("Franklin"), Inter-Community Telephone Company, LLC ("Inter-Community"), and North Central Telephone Cooperative, Inc. ("North Central") (collectively, the "Companies").¹ AWS urges the Commission to reject the Companies' requests for a one-year extension of their obligation to provide local number portability ("LNP"). In addition, AWS submits these comments to address a number of inaccurate statements about wireline-wireless porting in the petitions. As the petitions demonstrate, the Commission must decide outstanding inter-modal porting issues prior to November 24, 2003 in order to prevent wireline carriers from obstructing wireline-wireless LNP. In the alternative, if the Commission is unable to decide these issues before that date, the

¹ DA 03-3014, *Wireline Competition Bureau Seeks Comment on Requests for Waiver or Temporary Extension of the Requirement to Provide Local Number Portability to CMRS Providers*, CC Docket No.95-116 (comments due Oct. 17, 2003, replies due October 24, 2003).

Commission must also delay the implementation of wireless LNP until all outstanding LNP issues have been resolved.

I. THE PETITIONS FAIL TO MEET THE REQUIREMENTS FOR WAIVER

The petitions are deficient on their face, because the Companies fail to meet the Commission rules for grant of the waivers. First, the Companies have failed to meet the general waiver requirements of 47 C.F.R. Section 1.925(b)(3)(ii) of demonstrating unique factual circumstances and/or how the LNP obligation would be inequitable or unduly burdensome. For example, the Companies assert that it would be expensive or costly for them to implement the LNP upgrades to their systems, but fail to explain how these costs are unique to them, given that all carriers are experiencing significant costs and burdens in implementing or providing LNP.²

In addition, the Companies have failed to meet the specific requirements of Section 52.23(e) in requesting extension of time to comply with the LNP requirement. Specifically, among other things, the Companies have not set forth *detailed explanations* of the activities undertaken to meet the implementation schedule nor have they set forth a timeframe within which the carriers will complete deployment in the affected switches.³ In fact, the Companies blatantly reveal that they have done little to meet the implementation schedule other than

² See 47 C.F.R. Section 1.925(b)(3)(ii). Although the Companies assert that they should not have to expend resources and burden their customer base by implementing LNP for the small amount of customers seeking to port their numbers to wireless carriers, they provide no support for their assertion that there will only be a “small amount” of customers porting their number. Further, it is unclear why they would be more burdened by the costs of LNP implementation than any other carriers, including small rural CMRS providers, whom the Commission confirmed must implement LNP recently in an order. See *Matter of Telephone Number Portability, Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, FCC 03-237, CC Docket No. 95-116, Memorandum Opinion and Order (Oct. 7, 2003) (“Wireless LNP Clarification Order”).

³ 47 C.F.R. Section 52.23(e) (requiring, among other things, “detailed explanation” of the activities that the carrier undertook to meet the implementation schedule; time within which the carrier will complete deployment; and a proposed schedule for meeting deployment date).

gathering vendor estimates and costs.⁴ In addition, the Companies do not provide a specific timeframe for LNP deployment, and only pledge to complete deployment “within one year following the clarification of its obligations and confirmation that the [LNP] requests are valid.”⁵

The Companies have not met the waiver requirements and have demonstrated little intention of complying with their LNP obligations and even less intent to port to wireless carriers. Accordingly, the Commission should not grant these petitions.

II. THE PETITIONS CONTAIN A NUMBER OF INACCURACIES

In addition, AWS brings the Commission’s attention to a number of inaccurate statements about wireline-wireless porting in the petitions. Other local exchange carriers (“LECs”) have raised similar arguments and it is time that the Commission exposed these contentions as nothing more than attempts to delay or restrict the scope of inter-modal porting. Restrictions on inter-modal porting would clearly be contrary to the public interest and the Commission’s promise of inter-modal competition with wireless LNP.⁶

⁴ The Companies assert that it would be “technically infeasible” for them to implement the LNP upgrades within the required timeframe of six months upon receipt of request, and state that it would take six months from the date of ordering upgrades to install and test the necessary LNP upgrades. *See, e.g.*, Franklin petition at 8. It is unclear why the Companies could not have ordered the upgrades to implement LNP soon after receipt of the request, so that they would be close to meeting the required timeframe. In describing their implementation efforts, the Companies state that they provided the requesting wireless carrier a list of reasons why the Companies could not meet the schedule; and contacted vendors to determine cost estimates and length of time but *did not place any orders to implement the upgrades*. *See, e.g.*, Franklin petition at 14.

⁵ Franklin petition at 14.

⁶ The Commission concluded that wireless LNP “will promote competition between CMRS and wireline service providers as CMRS providers offer comparable local exchange and fixed commercial mobile radio services.” *Matter of Telephone Number Portability*, FCC 96-286, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking (1996) at para. 160 (“First LNP Order”).

A. Porting a Number from Wireline to Wireless is Not a Request for Location or Geographic Portability.

The Companies claim erroneously that, among other things, that the LNP request received from Sprint PCS constitutes a request for “location” or “geographic portability.”⁷ In support of its contention, the Companies argue that “location portability” occurs when numbers are ported from wireline to wireless carriers that “*serve areas beyond the LEC service territory*.”⁸ AWS and other carriers have comprehensively explained in comments on the pending CTIA Rate Center petition why porting a number from a wireline to wireless carrier does not result in “location” or “geographic portability.” AWS incorporates by reference its prior comments on the CTIA petitions.⁹ Accordingly, as long as the number remains associated with the rate center, we have further conclusively demonstrated that wireless carriers should be permitted to port anywhere within their service territory. Therefore, as long as the wireless carrier serves the rate center with which the number will be associated, the porting out requirement is consistent with the Act and the Commission’s rules.

As a preliminary matter, AWS re-emphasizes that there is no doubt that wireline-wireless porting is required. The Commission has expressly required wireline carriers to port to wireless

⁷ While the details of the petitions vary, the petitions generally put forth the same arguments. Further, although in general the Companies operate outside the 100 MSAs, North Central does serve some parts of areas within the 100 MSAs.

⁸ See, e.g., Franklin petition at 12.

⁹ As AWS noted in its comments on the CTIA rate center petition, the Commission must dispel the misconception that porting a number from a wireline to wireless carrier constitutes “location portability.” The primary reason that the Commission declined to mandate location portability related to the fact that: “[l]ocation portability would create consumer confusion and result in consumers inadvertently making, and being billed for, toll calls.” Numbers ported from a wireline to wireless carrier will continue to be *associated with the original rate center* to which the number was assigned, and consequently, there will be *no* customer confusion, rating problems, toll charges, or any of the other complex or adverse effects of location portability. See AWS reply comments on CTIA Rate Center Petition (Mar. 13, 2003) at 3-4.

carriers, and recently, the Wireless Bureau affirmed again that the “Commission’s rules *require porting between wireless and wireline carriers.*”¹⁰

Further, the Companies’ concern that porting a wireline number to a wireless carrier may enable a customer to make calls at locations beyond the original “location” of the customer illustrates the exact problem with these LEC arguments. Wireless carriers are licensed to serve large territories called “major trading areas” (“MTAs”), which often encompass areas beyond the LEC service territory. Thus, porting a number from wireline to wireless carrier will necessarily result in the customer’s ability to make and receive calls at locations beyond the LEC territory. The increased mobility that the customer gains is simply an inherent benefit of wireless service. However, the fact that wireless phones are not tethered to a specific location does not mean that numbers ported to wireless carriers will result in “location portability.” If the Commission believed the wireline carriers’ interpretation, it would *not* have required wireless LNP at the same time that it declined to mandate location portability in the *First LNP Order*.¹¹ For once and for all, the Commission must reject these LEC attempts to restrict inter-modal porting.

B. The Petitions Inaccurately Claim that a CMRS Provider Must Currently be Providing a Competitive Alternative in the LEC’s Territory

The Companies also assert that the LNP requests failed to comply with the FCC requirement that a carrier may request LNP in areas in which the “carrier is operating or plans to operate” because the CMRS provider is not currently providing a competitive alternative to the

¹⁰ The Wireless Bureau noted that the only issue before the FCC regarding wireline-wireless porting is the “extent of porting that is required in cases where a wireline customer wishes to port a number to a wireless carrier that does not have a presence in the rate center where the customer is physically located.” See Letter from John Muleta, Wireless Telecommunications Bureau, FCC, to John T. Scott, III, Verizon Wireless, and Michael F. Altschul, CTIA (Jul. 3, 2003) at 4.

¹¹ See *First LNP Order* at paras. 155 and 181.

local exchange service offered by the LEC.¹² This is not only irrelevant and illogical but also contrary to the Act's and Commission's goals behind LNP.

As an initial matter, nothing in the FCC's rules or the Act requires a CMRS provider to be providing service within the LEC's territory prior to submitting the LNP request. Specifically, the Commission has required that carriers must make LNP available within "specified timeframes after a specific request by another telecommunications carriers in the areas in which the requesting carrier is operating or *plans to operate*."¹³ The Commission's orders do not require that a carrier *already be operating service* within a given territory before submitting a LNP request. In fact, such a requirement would be completely contrary to the Act's and Commission's goals behind LNP of promoting competition. The Commission clearly viewed LNP as a tool that would facilitate and promote competition in areas where there may not yet be competition. It would be illogical to require competition to be present before LNP -- the tool for promoting competition -- can be implemented. Further, it is not for the LEC to decide whether the requesting carrier is offering a "competitive alternative" to the LEC's service; it is the marketplace that will ultimately determine whether the service is a competitive alternative.

III. THE PETITIONS ILLUSTRATE THE NEED FOR THE FCC TO DECIDE THE WIRELINE-WIRELESS ISSUES BEFORE THE NOVEMBER 24 DEADLINE

What is disturbing about these inaccuracies and the positions that LECs have taken in this docket is the implicit suggestion that some wireline carriers may delay or restrict the scope of

¹² See, e.g., Franklin petition at 7.

¹³ *Matter of Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Telephone Number Portability*, FCC 03-126, CC Docket Nos. 99-200, 96-98, 95-116, Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116 and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99-200 (June 18, 2003) at para. 10.

wireline-wireless porting. The Commission should not permit wireline carriers to thwart inter-modal competition while allowing wireless LNP to proceed.

The Commission specifically touted the benefits of inter-modal porting in its *First LNP Order*, when it mandated wireless LNP. It noted specifically that wireless LNP would “encourage CMRS-wireline competition, creating incentives for carriers to reduce prices for telecommunications services and to invest in innovative technologies, and enhancing flexibility for users of telecommunications services.”¹⁴ Given the Commission’s promise that wireless LNP would provide a competitive alternative for wireline service, the Commission cannot now let inter-modal porting fall by the wayside when wireless LNP is implemented. Accordingly, the Commission must resolve wireline-wireless LNP issues *before November 24*. In addition, the Commission must resolve these wireline-wireless issues in the manner advocated by AWS previously, and consistent with wireless-wireless LNP implementation. Any other outcome would undermine the Commission’s goals behind wireless LNP and would compromise the ability of customers to port numbers from wireline to wireless carriers. Finally, failure to require inter-modal LNP at the same time that wireless LNP proceeds would result in technological and regulatory disparity, which contravene the goals of the Act and the Commission.

In the alternative, if the Commission fails to address these and other wireline-wireless LNP issues before November 24, the Commission must delay wireless LNP implementation until it has resolved all outstanding issues. Indeed, depending on what the FCC requires, any clarification on these issues issued at this stage before November 24 may be too little, too late to ensure that LNP will proceed smoothly.

¹⁴ *First LNP Order* at para. 160.

IV. CONCLUSION

For the foregoing reasons, AWS respectfully requests that the Commission deny the petitions by the Companies. To the extent that it grants these extensions, the Commission must also delay wireless carriers' implementation of LNP until all outstanding LNP issues have been resolved.

Respectfully submitted,

AT&T Wireless Services, Inc.

Suzanne Toller
Jane Whang
Davis Wright Tremaine LLP
One Embarcadero Center, Suite 600
San Francisco, CA 94111
Tel. (415) 276-6500
Fax. (415) 2766599
Attorneys for AT&T Wireless Services, Inc.

/s/
Douglas I. Brandon
Vice President – Legal and External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W., 4th Floor
Washington, DC 20036
Tel. (202) 223-9222

Dated: October 17, 2003